THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

+Writ Petition Nos.3239 and 4571 of 2007

W.P.No.3239 of 2007

% Dated 25.04.2007

Md. Saleem Ur Rahman.

.....

PETITIONER

$ The A.P.State Wakf Board and others.

..... RESPONDENTS

! Counsel for the petitioner : Sri K.Subrahmanya Reddy
^ Counsel for respondent Nos.1 to 5: Standing Counsel for Wakf Board
^ Counsel for respondent No.6 : Sri Abdul Muqeeth Qureshi

W.P.No.4571 of 2007

% Dated 25.04.2007

The Managing Committee Fateh Khan Mosque Kalan.

.....

PETITIONER

$ The A.P.State Wakf Board and another.

..... RESPONDENTS

! Counsel for the petitioner : Sri Abdul Muqeeth Qureshi
^ Counsel for respondent No.1 : Standing Counsel for Wakf Board
^ Counsel for respondent No.2 : Sri K.Subrahmanya Reddy

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> HEAD NOTE:

? Cases referred:

(1) AIR 1974 ANDHRA PRADESH 289

(2) 1996(2) ALD 661 (D.B.)

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION Nos.3239 and 4571 of 2007

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W.P.No.3239 of 2007

Between:

Md. Saleem ur Rahman.

....Petitioner

And

The A.P.State Wakf Board and others.

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THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION Nos.3239 and 4571 of 2007

COMMON ORDER:

There is a Wakf, by name Fathekhanpet Kalan Mosque, in Fathekhanpet Village, Nellore District. One Sri Mohammed Ali Saheb was the Muthawalli of the said Wakf. He died on 23.06.1967. Ever since then, the administration of the Wakf was being entrusted to different persons, through specific orders, by the A.P.Wakf Board. His son, by name Md. Saleem Ur. Rahman, filed an application on 05.10.2004 with a request to appoint him as Muthawalli, as successor of his father. Through proceedings, dated 22.05.2005, the A.P.Wakf Board appointed him as Muthawalli. Shortly thereafter, the Wakf Board issued proceedings, dated 18.12.2005 appointing a Managing Committee to the Wakf. W.P.No.3239 of 2007 is filed by Md. Saleem Ur. Rahman, challenging the proceedings, dated 18.12.2005. The Managing Committee, in turn, filed W.P.No.4571 of 2007 assailing the order, dated 22.05.2005.

For the sake of convenience, the parties herein are referred to as they are arrayed in W.P.No.3239 of 2007 filed by Md. Saleem Ur. Rahman, in which A.P.Wakf Board is impleaded as respondent No.1, the Special Officer of the Wakf Board as second respondent, its Chief Executive Officer as respondent No.3 and the Managing Committee as respondent No.6.

The petitioner contends that the Office of Muthawalli for the Wakf is hereditary, in nature, and on account of his employment in Government Service, when his father died, he did not apply for succession and appointment immediately. He contends that his application made in the year 2004 was examined by the second respondent and the resultant orders were issued by the third respondent and that there is absolutely no basis for appointing a Managing Committee, that too, at the instance of a local M.L.A.

No counter affidavit is filed on behalf of the Wakf Board.

Apart from filing a separate writ petition, the 6th respondent filed a counter affidavit in W.P.No.3239 of 2007. It is urged that ever since the original Muthawalli died in the year 1967, the Wakf is under the administration of the Committee, and the appointment of the petitioner as Muthawalli, without notice to the Committee is unsustainable in law. Several other grounds are also urged, touching upon the state of affairs that are existing in the Wakf.

Sri K. Subrahmanya Reddy, the learned senior counsel appearing for the petitioner submits that once the petitioner was recognized as the successor to the original Muthawalli and appointed, as such, there is absolutely no basis for respondents 1 to 3 in appointing the 6th respondent-Committee. He also submits that the administration of a Wakf through Muthwalli is a rule and appointment of Committee is an exception, where no Muthawall is appointed. He places reliance upon certain decided cases.

Learned Standing Counsel for the Wakf Board submits that though the petitioner was appointed as Muthawalli, later it emerged that by the time he was appointed, the Wakf was under the administration of a Committee and on verification of the matter, in detail, show cause notices were issued to the petitioner as well as the 6th respondent-Committee. He further submits that the petitioner and the 6th respondent can work out their remedies before the Wakf Tribunal.

Sri Abdul Muqeeth Qureshi, learned counsel for the 6th respondent-Committee submits that though the Wakf was under the administration of a Muthawalli till 1967, thereafter, its administration was entrusted to a Committee and the appointment of the petitioner as Muthawalli, without giving an opportunity to the Committee is illegal and contrary to the provisions of the Wakf Act, 1995. He contends that the petitioner had incurred disqualification to act as Muthawalli, on account of the lapses on his part and it is not at all safe to give the administration of the Wakf to him.

The father of the petitioner, admittedly, was the Muthawalli till his death i.e. on 23.06.1967. For one reason or the other, the petitioner did not claim succession. The record discloses that the administration of the Wakf was entrusted to the Committees, from time to time. It was only on 05.10.2004, that the petitioner submitted an application to the second respondent, for being recognized and appointed as Muthawalli. Through proceedings, dated 22.05.2005, issued in the name of the third respondent,

the petitioner came to be appointed as Muthawalli. Thereafter, the appointment of the petitioner was notified in the A.P.Gazette, dated 16.06.2005.

The administration of a Wakf predominantly vests with the Muthwalli, appointed through succession or otherwise. The appointment of a Committee arises only when the Wakf does not have a Muthawalli. Conversely, no Committee can be appointed as long as the Muthawalli functions for a Wakf. This aspect of the matter was made clear by a Division Bench of this Court in ***V. Gangadhararao vs. K.Venkateswara Rao***[1]***.*** Though the matter arose under the Wakf Act, 1954, there does not exist any significant change in the 1995 Act, on this aspect. After referring to the relevant provisions of that Act, the Division Bench observed as under:

> *"The first question is whether the so-called managing committee has been properly constituted. The managing Committee, whether it is constituted by the previous mutawalli with the permission of the Board or it was constituted by the Board, can no more continue. After having recognized the petitioner as mutawalli, he can manage the properties of the wakf. The only power which the Wakf Board has is to appoint a supervisory committee under Section 16 of the Act. The learned Advocate for the Wakf Board could not invite our attention to any provision of law by or under which the Wakf Board can appoint a managing committee even where a mutawalli is recognized by the Board without removing him. Both the committee as well as the mutawalli cannot simultaneously function is conceded. What then remains to be seen is whether the managing committee, which was continued by the Wakf Board even after the appointment of mutawalli, was valid. In the absence of any express provision authorizing the Board to appoint the managing committee in such a case. We do not think that after the mutawalli was appointed, the managing committee could have continued. The order*

continuing the managing committee therefore is without jurisdiction and is ineffective. The managing committee therefore has to go."

The third respondent issued proceedings, dated 18.12.2005 appointing the 6th respondent-Committee to the Wakf. The basis for this appointment is mentioned in the reference viz., proceedings, dated 08.03.2002, and a letter from local M.L.A. dated 12.04.2005. By the time this order was passed, not only the petitioner was appointed as Muthawalli, but the appointment was also notified in the Gazette.

It is interesting to note that the same Chief Executive Officer is said to have signed both the orders, appointing the petitioner as Muthawalli and the 6th respondent as Committee. These two naturally cannot be reconciled. The third respondent woke up in the matter and recognized the inconsistency. However, he exhibited shallowness, by issuing show cause notices to the petitioner on 20.06.2006 and the 6th respondent on 03.08.2006. In both of them, he directed the concerned parties, to show cause as to why the orders of their appointment shall not be cancelled. Such a course, if at all, would only reflect the lack of consistency, non-application of mind and mal-administration of the affairs of the Wakf as well as the Wakf Board. It is strange to note that the same official had appointed the Muthawalli and the Committee, without finding any illegality or inconsistency, in such a course, and overnight found that both of them cannot be sustained and sought cancellation.

Assuming that the third respondent did not issue show

cause notices either to the petitioner or to the 6th respondent-Committee, it needs to be seen as to whether the appointment of the petitioner suffers from any infirmity or illegality. Till the third respondent passed the order, dated 18.12.2005, appointing the 6th respondent-Committee, neither the order, dated 22.05.2005, appointing the petitioner as Muthawalli was challenged in a Forum nor any proceedings were initiated to set aside the same.

As pointed out earlier, the basis for appointing the 6th respondent was a letter from the local M.L.A. It is apt to refer to the observations made by a Division Bench of this Court in almost identical situation in ***Intezami Committee Mazid-E-Osmania vs. A.P.State Wakf Board***[2], which read as under:

> "*The instant case, in our opinion, will squarely fall within the rule aforementioned particularly when the influence of the Member of the Legislative Assembly and the minister in appointing the Ad hoc Managing Committee is writ large in the facts that (1) all those named in the letter of the Member of the Legislative Assembly are appointed as members of the ad hoc committee and are placed in the same position as the letter suggested and (2) in any event there is clear proof that the Special Officer made no exercise of his own to find out whether there was any requirement to appoint an Ad hoc Managing Committee. It is a gross case, in our opinion, in which the order issued by the Special Officer is wholly unauthorized and as it is stated by Viscount Haldane in Shearer v. Shields, (1914) AC 808, "A person who inflicts an injury upon another person in contravention of the law is not allowed to say that he did not so with an innocent mind; he is taken to know the law, and he must act within the law. He may, therefore, be guilty of malice in law, although, so far the sate of his mind is concerned, he acts ignorantly, and in that sense innocently". We are constrained in the instant case to observe that the Special Officer has completely abdicated*

his functions to the desire of a Member of the Legislative Assembly and the Minister of the Government of the State; an act which in itself is enough to destroy the credibility behind the impugned order."

From the above discussion, it emerges that there is absolutely no basis for the third respondent, in appointing the 6th respondent-Committee for the Wakf; and the order, dated 22.05.2005, appointing the petitioner as Muthawalli does not suffer from any illegality or infirmity.

Hence, Writ Petition No.3239 of 2007 is allowed and Writ Petition No.4571 of 2007 is dismissed. There shall be no order as to costs.

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(L.NARASIMHA REDDY,J)

Date: 25.04.2007
Note: L.R.Copy to be marked.
(B/o)
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[1] AIR 1974 ANDHRA PRADESH 289
[2] 1996(2) ALD 661 (D.B.)